

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
ALLSTATE INSURANCE COMPANY, : 08-cv-04405-SLT-PK
et al., :
Plaintiffs, :
- versus - : U.S. Courthouse
: Brooklyn, New York
MIRVIS, et al., : June 6, 2017
Defendants :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE PEGGY KUO
UNITED STATES MAGISTRATE JUDGE

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1 (Microphones not positioned and functioning
2 properly, thereby creating indiscernible portions in the
3 record.)

4 THE CLERK: The Honorable Magistrate Judge
5 Peggy Kuo presiding.

6 Civil Cause for a Motion Hearing, docket number
7 08-cv-4405, Allstate Insurance Company, et al. v. Mirvis,
8 et al.

9 Counsel, please state your name for the record.

10 MR. NATBONY: For plaintiffs, William Natbony
11 from Cadwalader, Wickersham & Taft.

12 Good afternoon, your Honor.

13 MR. STERN: Good morning, your Honor.

14 Robert Stern, along with Daniel Marvin and
15 Kristy Eagan (indiscernible).

16 MR. FURMAN: For judgment debtor, Georgy
17 Statnigrosh and additionally, the third-party, Nelly
18 Zhuravsky, Abrams, Fensterman by Mark Furman.

19 MR. SILBER: Good morning, your Honor.

20 Meyer Silber for nonparties Tatyana Mirvis,
21 Lyubov Mirvis and (indiscernible).

22 THE COURT: All right. Good morning, everyone.

23 So we're here on a motion to avoid fraudulent
24 conveyance filed by the plaintiffs and there are two, so
25 I would like to start with the Mirvis -- the motion

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1 regarding to the Mirvis judgment debtor.

2 So as a preliminary matter, there was an issue
3 about whether we needed to have a special proceeding in
4 this case. And I have seen -- I have read the pleadings
5 and it seems to me that there's no need for a special
6 proceeding in this case. There's no issue with regard to
7 personal jurisdiction but I wanted to give defendants an
8 opportunity to argue on this point.

9 Mr. Silber, did you want to convince me
10 otherwise?

11 MR. SILBER: That argument was put forth
12 (indiscernible). I am not going to (indiscernible).

13 THE COURT: Okay. Great. Mr. Furman, let me
14 give you an opportunity. Did you want to speak to that?

15 MR. FURMAN: Your Honor, I believe this raises
16 the issue of personal jurisdiction with regard to Mrs.
17 Zhuravsky, who is not before the Court. Now I know that
18 she was served here but not being able or not -- not
19 being -- having come into the Court today, I believe that
20 she should have been served with all the papers and that
21 she -- the issue of jurisdiction should have been raised
22 or raised, and should have been decided earlier than
23 this. So I am raising that now.

24 THE COURT: When you say earlier than this,
25 when would have been --

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1 MR. FURMAN: Well, earlier than they've raised
2 it in their opposition papers.

3 THE COURT: This is a motion by the plaintiff.

4 MR. FURMAN: Yes.

5 THE COURT: You were the ones who are supposed
6 to raise the opposition.

7 MR. FURMAN: In reply papers.

8 THE COURT: Well, but I thought that you --
9 okay, let me just backtrack. My understanding is that
10 one of the grounds for your argument in opposition is
11 that there should be a special proceeding that we can't
12 just have a proceeding as we have now.

13 MR. FURMAN: That's correct.

14 THE COURT: So you're the one who brought it
15 up.

16 MR. FURMAN: And the alternative is that if --
17 there should not be a special proceeding, then there's a
18 question of personal jurisdiction over it in this case.

19 THE COURT: I see. So if I -- but I am still
20 not understanding your argument that it should have been
21 raised earlier. It was you who raised the issue and if
22 you didn't raise it until now, who was supposed to raise
23 it earlier?

24 MR. FURMAN: Well, when we raised it --
25 initially, we raised it as being a special proceeding and

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1 the alternative of it not being a special proceeding is
2 then is there a question -- it's not in this -- in this
3 action, then how is she here? It's not a special
4 proceeding because they've argued there shouldn't be a
5 special proceeding. So it's in this action. So how is
6 she in this action?

7 THE COURT: Okay. So you're saying that the
8 reason we should have a special proceeding is that there
9 is, in fact, a personal jurisdiction issue.

10 MR. FURMAN: Yes.

11 THE COURT: Okay. So Mr. Natbony, did you want
12 to say something?

13 MR. NATBONY: Sure. Thank you, your Honor. In
14 their opposition papers, they don't make a challenge
15 specifically to the issue of personal jurisdiction. What
16 they say and according to their opposition papers is
17 simply a vague recitation that Ms. Zhuravsky has not been
18 afforded, "the opportunity to be heard or defend
19 herself," whatever that means.

20 There's no allegation here that there's no
21 personal jurisdiction. In fact, based on questions that
22 she's answered, she works in Rego Park, New York. So I
23 don't see how there is an issue of personal jurisdiction
24 here. That's (indiscernible).

25 THE COURT: Okay. So I don't -- is there

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1 anything further, Mr. Furman?

2 MR. FURMAN: No.

3 THE COURT: All right.

4 MR. FURMAN: No, Judge.

5 THE COURT: So I find that the special
6 proceeding is not necessary here and we could just move
7 forward on the proceeding in this case.

8 So let's turn to the substantive part of it.
9 So the crux of the case is whether there was fair
10 consideration given for this property with regard to the
11 Mirvis debtor -- judgment debtor, the issue is with
12 regard to 289 Bayberry Drive and even though there were
13 conveyances on -- back and forth, I think the relevant
14 conveyance here is the one from May 11th, 2015 from Mark
15 Mirvis to his daughter, Tatyana Mirvis.

16 The consideration that's alleged was or that
17 was written, it was -- what was the document again where
18 it was written that the consider was \$10 and other
19 valuable consideration? Was that --

20 MR. SILBER: The deed.

21 THE COURT: That was in the deed, okay. And
22 obviously \$10, it's not fair consideration for this
23 property but there is this whole other valuable
24 consideration aspect. So Mr. Furman -- I'm sorry, Mr.
25 Silber, can you tell me what the other valuable

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1 consideration is? Is it the payment of the carrying
2 costs?

3 MR. SILBER: Principal.

4 THE COURT: All right.

5 MR. SILBER: There's the -- we can understand
6 that the property is not -- is a -- has in excess of
7 \$800,000 of mortgage debt. That was picked up, in
8 addition to all of the carrying costs, by Ms. Tatyana
9 Mirvis. Her affidavit -- both affidavits, her father's
10 (indiscernible) specify the amounts of money that were
11 earned by her specifically, picked up on her tax return
12 specifically, taxes paid specifically and that those
13 funds were used to pay the carrying costs.

14 I don't think there's a challenge to the fact
15 that those funds were, in fact, used to pay the carrying
16 costs. Allstate claims that it's not her money which is
17 not really relevant in these considerations, unless they
18 can prove to the Court that, in fact, the money is not
19 hers.

20 On its face, the money is hers. They have
21 their -- you know, they've got a series of self-serving
22 arguments that the money is not hers but she's explained
23 -- it's not him, your Honor, she's explained that between
24 2000 and 2012, '13, the money was not hers. The money
25 was the proceeds of Oceania Condominium that was sold in

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1 Brooklyn, put into her account and from her account, the
2 carrying costs were paid. She doesn't lay claim to that
3 money.

4 She makes claim to money subsequent to that,
5 2013, '14, 2015 -- I'm sorry, '13, '14, '15, in excess of
6 a million and a half dollars in declared, taxable income.
7 There's clearly enough money from the money she's earned
8 between her and her husband, to have paid the \$340,000 in
9 carrying costs of the property. So she's paid \$300,000
10 in carrying costs that were over a two or three year
11 period.

12 THE COURT: What was that period?

13 MR. SILBER: 2013, '14, and '15.

14 THE COURT: Before or after May 11, 2015?

15 MR. SILBER: I'm sorry?

16 THE COURT: Or are you saying it doesn't
17 matter? Because the last -- the conveyance -- I'm
18 focused on the conveyance on May 11, 2015, which is when
19 Mark Mirvis turned it --

20 MR. SILBER: So before --

21 THE COURT: -- signed it over to her but you're
22 saying before because it went in March -- I'm sorry, May
23 20th, 2013, from Mark Mirvis to her and for no
24 consideration, and then it went back to Mr. Mirvis on
25 October 20th, 2013, again for no consideration and then

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1 finally, a week after the judgment was entered, May 11th,
2 2015, it went from Mark Mirvis to her again.

3 MR. SILBER: Right.

4 THE COURT: So I am not clear on how you're
5 counting the payments -- the consideration. You're
6 adding up all the money that she already paid?

7 MR. SILBER: I'm adding --

8 THE COURT: Even when it wasn't her property?
9 I mean, when it was -- the deed was in Mark Mirvis' name,
10 why would it matter that she's paying?

11 MR. SILBER: Well, the question is did she pay
12 consideration -- fair consideration for the property?

13 THE COURT: Then --

14 MR. SILBER: I don't know that it matters that
15 she paid before or afterwards?

16 THE COURT: Yes, it does because then I don't
17 know if it's fair, right? Fair consideration is a dollar
18 amount.

19 MR. SILBER: Right.

20 THE COURT: And so if I don't know what the
21 dollar amount is that she paid, I don't know if it's
22 fair.

23 MR. SILBER: But we do know what dollar amount
24 she paid.

25 THE COURT: Okay. So what's the dollar amount?

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1 MR. SILBER: More in -- in four or up until
2 that point and (indiscernible) market worth
3 (indiscernible) dated specified that she paid in excess
4 of \$300,000 in carrying costs to the property.

5 Now the reason why the transfer happened at
6 that point is because she realized that she wanted to --
7 she was informed and understood that she was able to pick
8 up the carrying costs of the property as a deductible
9 (indiscernible) on return but when she tried to do that,
10 she was told she couldn't do that, okay?

11 So I don't know that it matter -- if the idea
12 is that she is carrying the property and in her mind and
13 her parents's mind, the property is essentially hers, so
14 much so that she is going to deduct the carrying costs of
15 the property. I don't know that it matters when exactly
16 the money was paid.

17 THE COURT: Well, you're using some curious
18 words there to say in her mind or in their mind they
19 thought the property was hers but deeds mean something
20 and the name on the written deed is important, so the
21 fact that it went back and forth is not inconsequential.
22 I mean it means something, right?

23 MR. SILBER: (Indiscernible).

24 THE COURT: So that's why I am -- just because
25 -- and actually if what you're saying is the deeds don't

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1 matter, it was her property and it just went back and
2 forth, then that kind of plays into the plaintiff's
3 argument that the property -- there was no delineation
4 between Tatyana and Mark. That they just kind of shared
5 property and it went back and forth despite what the
6 papers say.

7 MR. SILBER: Well --

8 THE COURT: So that's the part that I am a
9 little curious about and I would like you to explain it
10 more.

11 MR. SILBER: It wasn't -- my (indiscernible)
12 wasn't intended to express this (indiscernible) the
13 Court. As far as the transfers, let's just address that
14 for a second.

15 THE COURT: Uh-hum.

16 MR. SILBER: In 2013, there informed -- and
17 Allstate can quibble with who informed them or why they
18 were informed, they were -- it's true, I mean for estate
19 planning purposes, the initial transfer (indiscernible)
20 the house two times, your Honor.

21 I don't know if that's right or that's wrong
22 but the point is that's what they were informed. They
23 relied on that counsel and they did that.

24 THE COURT: 50 percent? I thought the whole
25 thing went to her. It was 100 percent.

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1 MR. SILBER: This was in 2013.

2 THE COURT: On May 20th, 2013, only 50 percent
3 went over to Tatyana?

4 MR. SILBER: Yes.

5 THE COURT: All right.

6 MR. SILBER: Thereafter, they were instructed
7 that it's not a good idea, given the Allstate lawsuit and
8 it looks bad and the estate planning purposes were not
9 (indiscernible). And that's what happened. That's why
10 there is no consideration because there was -- Tatyana at
11 that point was paying almost none of the expenses. She
12 picked up the expenses around that time but --

13 THE COURT: Around what time? That's what I
14 keep asking, from when did she start paying?

15 MR. SILBER: In 2000- -- let me give you the
16 exact dates -- in 2013, '14, and '15, she picked up the
17 principal payments on the house. Her father did pull out
18 money from pensions and earned a few dollars
19 (indiscernible) but principally the money came from her,
20 '13, '14 and '15 but the transfer from her parents to her
21 in '13, was not as a result of the -- of her payments.
22 Counsel were (indiscernible) from estate planning
23 purposes.

24 The '15 transfer came about because she was
25 carrying the property at that point and I get it, I don't

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1 think Allstate disputes the money was coming from her
2 pocket. They're just arguing that the money was put into
3 her pocket by her father.

4 So I don't think that that really is an issue
5 and if you look at the source of the funds, the money
6 from the Oceania Condo was extended by late '12 and early
7 '13. There was no funds from the proceeds of the sale
8 that could have been used because they were gone. And
9 Tatyana doesn't say that she did pay her expenses before
10 that time. That money did, in fact, come from her
11 parents -- from proceeds of the sale of her parents
12 condo.

13 It was afterwards and she doesn't make any
14 money at that point. She makes money in 2013.

15 THE COURT: When you say make money, you mean
16 she has income?

17 MR. SILBER: Income. Yes, her income begins in
18 2013.

19 THE COURT: All right.

20 MR. SILBER: She could not have paid the
21 carrying costs prior to that because she had no income.
22 Her income matured. In '13, she had \$250,000 in income.
23 In '14, she had \$646,000 in income and in '15, she had
24 \$560,000.

25 THE COURT: And what is the source of her

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1 income?

2 MR. SILBER: Principally, two -- one -- it's
3 kind of a (indiscernible) but one or two pharmacies that
4 she was a partner in.

5 THE COURT: Okay.

6 MR. SILBER: She picked up this income on her
7 tax return and is paying taxes on it. So if Allstate is
8 going to argue the money is not hers, it's a nice
9 argument but every indication is she (indiscernible).

10 THE COURT: Well, my understanding is the
11 argument is one step before that. I think the idea is
12 that the conveyance itself, the deed says in 2015 from
13 Mark Mirvis to Tatyana Mirvis which is 100 percent,
14 right, that's not 50 percent.

15 MR. SILBER: Yes.

16 THE COURT: That's 100 percent was for -- and
17 it's written down, \$10 and other valuable consideration.
18 So if the -- if it was for some amount of money which
19 you're saying was paid before this date, 2013, 2014, why
20 not just write that down?

21 MR. SILBER: Because the --

22 THE COURT: Why be so vague about it?

23 MR. SILBER: I don't think it's being vague at
24 all.

25 THE COURT: Well other valuable consideration

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1 is pretty vague. If you know the -- if it's a dollar
2 amount in the future, you could say because it's going to
3 be some dollar amount, we don't know what it is yet but
4 it's going to be something covering this. But you're
5 saying that the money has already been paid, 2013, 2014.
6 Everyone knows -- if that's the case, if it's been paid
7 already, every knows what it is and if Mark Mirvis is
8 saying that it's over \$300,000, why not just put hat
9 down?

10 MR. SILBER: Because as transactional lawyers,
11 (indiscernible) undoubtedly tell the Court and I assuming
12 the Court knows, every contract is \$10 for consideration.
13 It's a legal (indiscernible).

14 THE COURT: Wait, everybody -- every contract
15 says that? I have never seen a contract that says that.

16 MR. SILBER: Pretty much a contractor talks
17 about the transactions says legal -- promises and
18 consideration being acknowledged or \$10 legally
19 (indiscernible).

20 THE COURT: Yes, but this is the sale of real
21 estate. This is not just --

22 MR. SILBER: It wasn't the sale of real estate.
23 It was interfamily transfer.

24 THE COURT: Ah, okay. So --

25 MR. SILBER: That -- and I don't think we're

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1 focusing -- you know what? That actually proves a point,
2 that they weren't trying to hide from Allstate because if
3 they were trying to hide from Allstate, if this
4 transaction was a mechanism to avoid Allstate's judgment,
5 then maybe they would have done just that but because
6 they weren't concerned that Allstate would come hunting
7 them down as a result of that transfer, they put in the
8 -- let's say the minimum required legal language in a
9 transactional document that allowed -- that provided
10 consideration for the transactions.

11 THE COURT: But you're saying they had no idea
12 that Allstate would come looking at this. This was --
13 this occurred a week after the judgment. So how did they
14 -- how were they not on notice?

15 MR. SILBER: Exactly. Not that they weren't on
16 notice, the transfer was not intended to avoid the
17 judgment. The transfer was intended so that Tatyana
18 could pick up these expenses on her tax return and deduct
19 them, not to avoid Allstate. If they wanted to avoid
20 Allstate, they could have done two dozen other things to
21 hide the transaction.

22 THE COURT: Okay. So --

23 MR. SILBER: The bottom line is that
24 everything, even though she had a transfer, was the
25 transparently humanly possible, paper trail is a mile

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1 long, if they were trying to hide from Allstate, they did
2 a pretty darn bad job.

3 THE COURT: Okay. All right. So plaintiffs?

4 MR. NATBONY: Thank you, your Honor. A few
5 points. First of all, I -- when it comes to a deed on
6 the documents on the property, at least the ones that
7 I've dealt with in my career, don't say \$10 and other
8 valuable consideration.

9 And, in fact, my understanding is that the \$10
10 amount is also the amount that is being used under the
11 ACRIS system to determine real property transfer tax. So
12 I mean, you (indiscernible) them out in a deed for those
13 purposes, as well.

14 But in particular, I think you need to go back
15 to at the time of the deed, the argument from the other
16 side is that there were carrying costs that were paid and
17 what the record here shows -- we have to go back and
18 understand what Tatyana first alleged. Right? She first
19 alleged in a sworn affidavit that she was paying all the
20 carrying costs. That was her first affidavit.

21 We've now shown that to be a lie, a dead,
22 straight-on lie. We've put before the Court evidence
23 that shows that, in fact, Mr. Mirvis was paying a fair
24 portion of the carrying costs. We've also shown that at
25 the time that he sold -- that the Brooklyn property was

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1 sold, approximately \$305,000 was put into Tatyana Mirvis'
2 account, an account that Mr. Mirvis specifically asked
3 her to set up literally to avoid paying the judgment in
4 Brooklyn. So this is a family affair. The \$300,000 that
5 was paid came from Mr. Mirvis, was given to Tatyana
6 Mirvis in an absolute attempt to basically commit fraud
7 and that's what occurred here.

8 So we showed that Mr. Mirvis was paying part of
9 the carrying costs. Now she says that oh, it's really
10 her money. Well, it's not her money. It's \$300,000
11 that was put into her account with a preconceived plan to
12 make it seems like it was her money when it was not and
13 that was the money that was used, that forms the basis of
14 the argument that at the time of the transfer, it's
15 counting to pay these old carrying costs.

16 THE COURT: But --

17 MR. NATBONY: And more importantly, where's the
18 documentary proof? Do we have a single document from her
19 that says here's my income, here's the payments that I
20 made. Here's what I agreed. Is there an assumption of
21 the mortgage? Is there an assumption of carrying costs?
22 Nothing. We have a simple, seven paragraph affidavit
23 that says believe me. Here's what I did.

24 Well you know what? She's already proven that
25 she will tell lies to the Court that shouldn't be

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1 considered.

2 THE COURT: Well, let me ask a question. You
3 said that it's been shown that Mark Mirvis paid a fair
4 portion of the carrying costs. Is it --

5 MR. NATBONY: Fair, not equitable but -- okay.

6 THE COURT: Yes, but is that a direct payment
7 or is it through this roundabout way that you've
8 described?

9 MR. NATBONY: No, no, we showed about \$135,000
10 was paid between 2010 and 2015. It's on page 5 of our
11 brief, Exhibits A through E. Payments for mortgage, for
12 home equity line of credit, property tax payments,
13 insurance payments. No, those were direct.

14 THE COURT: Okay.

15 MR. NATBONY: So what I am saying is what that
16 goes to show is that the initial allocation by Tatyana
17 Mirvis, that she was carrying or any -- all of the
18 carrying costs was not true. So now she's backtracked
19 from that and said oh, okay, I really only obtained a
20 portion. Well, that's not even true because what was
21 coming into her account was this \$305,000 from Mr. Mirvis
22 that he put in there specifically (indiscernible) -- this
23 wasn't I'm going to put it into your account. It's a
24 gift. No, I want you to set up a new account that the
25 two of us can use.

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1 And don't forget, your Honor, when we were
2 before you on the PI motion, right, we demonstrated to
3 you that Mr. Mirvis had control over that account. That
4 he was writing checks. That he was doing deposit slips
5 that would say that this is Tatyana Mirvis' money.
6 That's all.

7 THE COURT: Okay. All right.

8 MR. SILBER: Your Honor, I'm sorry. Can I jump
9 in there for a second?

10 THE COURT: I will give you an opportunity to
11 respond to that and then we need to move on.

12 MR. SILBER: The only way for Allstate to win
13 the day here is simply to confuse the facts. The money
14 counts were just referred to, you know, she had the
15 money, was gone by 2012.

16 THE COURT: Gone from where?

17 MR. SILBER: It was spent. The two --

18 THE COURT: Spent how?

19 MR. SILBER: On Mark Mirvis used the money --
20 in 2010, Oceania sold for approximately \$300,000 -- more
21 than \$300,000 went into an account in Tatyana's name. We
22 don't dispute that. The reason why that was done was
23 because Mark had -- the accounts had been closed by Mark
24 based on the Florida foreclosures and again, if he was
25 trying to avoid Allstate, he did a pretty bad job. He

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1 would have --

2 THE COURT: But Mr. Silber, that's not a very
3 good argument.

4 MR. SILBER: Look, my point is is that
5 everything he's done was transparent and a paper trail.
6 If he was trying to find the Oceania proceeds, he would
7 have stuck it in an account that didn't have his
8 daughter's name on it.

9 THE COURT: But then he wouldn't have control
10 over it.

11 MR. SILBER: Who said? Of course he could.

12 THE COURT: How?

13 MR. SILBER: He could have put it into an
14 entity. He could have some -- his brother take care of
15 his cousin, I don't know. I mean --

16 THE COURT: The fact that his daughter rather
17 than a brother is of no consequence, right? I mean, it's
18 still a family member, so that he can have control over
19 it.

20 MR. SILBER: My point, your Honor, is that he
21 did what was easy and convenient --

22 THE COURT: Okay.

23 MR. SILBER: -- because that's what he was
24 trying to do.

25 THE COURT: Okay.

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1 MR. SILBER: He was trying to make those funds
2 available to pay his and his family's expenses.

3 THE COURT: So it was still his money even
4 though it was in Tatyana's name.

5 MR. SILBER: Agreed.

6 THE COURT: Okay.

7 MR. SILBER: Agreed.

8 THE COURT: Okay.

9 MR. SILBER: That money -- this is a critical
10 section that Allstate completely smudges.

11 THE COURT: Okay.

12 MR. SILBER: That money was spent by 2012.

13 THE COURT: Right, but when you say spent, I am
14 curious what you mean by spent. You can spend the money
15 by paying off a mortgage. You can spend the money by
16 throwing a big party. How was it spent? Was the money
17 spent to pay off --

18 MR. SILBER: All the above.

19 THE COURT: Okay.

20 MR. SILBER: All of the above.

21 THE COURT: So some of that money went to pay
22 the mortgage.

23 MR. SILBER: Mark and his wife used the money
24 that belonged to them, it was their money in Tatyana's
25 name, to pay the mortgage and to go on vacation and to

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1 buy food and to do whatever they're going to do for
2 approximately a three year -- almost a three-year period.

3 THE COURT: Okay.

4 MR. SILBER: At the end of 2012, that money was
5 gone. It was spent.

6 THE COURT: So that account went to zero?

7 MR. SILBER: Pretty much. I can't represent to
8 the Court that it was -- because I don't have that
9 information in front of me but it was pretty --

10 THE COURT: Okay. So the money that you said
11 Tatyana paid, the carrying costs, where did that money --
12 which account did that money come from?

13 MR. SILBER: That came from that - largely from
14 that account.

15 THE COURT: The same account, okay.

16 MR. SILBER: Because that was the money that
17 came in 2013, that's when she started burning her own
18 money.

19 THE COURT: I see.

20 MR. SILBER: In 2013 --

21 THE COURT: Okay. I understand the point.

22 MR. SILBER: -- she (indiscernible) \$250,000.

23 THE COURT: Right.

24 MR. SILBER: In 2000- --

25 THE COURT: But it's all going into the same

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1 account. She didn't open a different account to say --

2 MR. SILBER: (Indiscernible) she did.

3 THE COURT: Okay. So that --

4 MR. SILBER: But my point is that they keep
5 saying the money was given to her by Mark.

6 THE COURT: Right.

7 MR. SILBER: It wasn't. The money that Mark
8 put in that account --

9 THE COURT: I understand what you're saying.

10 MR. SILBER: -- he was spending --

11 THE COURT: I understand what you're saying.
12 Okay. So that's the -- I just want to be clear, right,
13 so you're saying for the 2015 transfer --

14 MR. SILBER: The --

15 THE COURT: Hold on. For the 2015 transfer,
16 the fair consideration is the \$10 plus what?

17 MR. SILBER: Plus \$300,000 and change that --

18 THE COURT: And change. You don't have an
19 actual number.

20 MR. SILBER: It's (indiscernible) \$300,000 that
21 Tatyana used from her proceeds -- from her income that
22 she did (indiscernible) the carrying costs of the
23 property and to -- the carrying costs of the property. I
24 apologize, I don't have a breakdown. I might.

25 THE COURT: Okay.

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1 MR. NATBONY: Your Honor?

2 THE COURT: You were never provided that,
3 right?

4 MR. SILBER: And --

5 THE COURT: Did you provide it to the Court?

6 MR. SILBER: Yes, absolutely.

7 THE COURT: Okay. Which one is that?

8 MR. NATBONY: No, your Honor,
9 (indiscernible) --

10 THE COURT: Hold on. Let me just look -- I
11 want to give Mr. Silber an opportunity. In which exhibit
12 did you show me exactly how much Tatyana paid?

13 MR. SILBER: In her affidavit --

14 THE COURT: In her affidavit but you don't have
15 any supporting documentation, right?

16 MR. SILBER: Well --

17 THE COURT: Like a receipt, a canceled check.

18 THE COURT: Yes, yes, yes.

19 MR. SILBER: A bank statement that --

20 THE COURT: Yes. In Mr. Furman's opposition,
21 attached to Mr. Furman's opposition, there are -- in
22 document 363, there are expenses that she paid --

23 MR. NATBONY: Which is after --

24 THE COURT: Well, hold on. What's the time
25 period?

Proceedings

1 MR. SILBER: Well, these are recent bills.

2 THE COURT: Yeah, but if you're saying that the
3 consideration for the transfer on May 11th, 2015 was for
4 payments up to that point, the transfers after what
5 matter because --

6 MR. SILBER: But there's --

7 THE COURT: You're talking -- you can't have it
8 -- you sound like you're -- it sounds like you're the one
9 not being clear. If you're talking about the amounts
10 paid before, that's what I am asking you, how much was
11 paid up until that point

12 MR. SILBER: I can --

13 THE COURT: You don't have documentation of
14 that.

15 MR. SILBER: I do -- between 2010 and 2012,
16 approximately \$300,000 was paid by Mark's money into
17 Tatyana's account and in '13, '14 and '15, approximately
18 \$300,000 was paid in -- from Tatyana's money. I don't
19 think -- I am going to speak out of line perhaps, I don't
20 think there's a dispute that the money went to carry the
21 property. The question is whose money it was.

22 I don't think that there's a -- if there's an
23 argument that money wasn't expended -- I mean, the
24 mortgage was paid, the electric was paid. Allstate
25 argues that Mark actually -- there are checks that came

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1 from Mark. That's not disputed in the supplemental
2 papers. Mark says that he took money out of a -- not a
3 retirement account, a pension account and he earned some
4 money and he did -- he wasn't interested in having his
5 daughter carry the property. It was humiliating for him
6 to do that.

7 THE COURT: But --

8 MR. SILBER: He used whatever money he did have
9 at his disposal to pay what he could but the bottom line
10 was that he couldn't. So --

11 THE COURT: So why -- you're saying that your
12 clients are making things clear and plaintiffs are making
13 it unclear, why if the account that was set up from the
14 proceeds from Oceania, was clearly for Mark Mirvis' use,
15 all right, then why would Tatyana use that same account
16 to use -- when she had income and was trying to pay her
17 own expenses. Now she's created a lack of clarity by
18 mixing all the money up into one pool. Right?

19 MR. SILBER: Well, but --

20 THE COURT: Do you have an explanation for why
21 she --

22 MR. SILBER: Could she have opened another
23 account?

24 THE COURT: It's fairly simple.

25 MR. SILBER: She could have. The bottom line

Proceedings

1 is that was the primary account that was used to pay the
2 expenses. There were electronic transfers that were
3 already set up into that account and paid. There were
4 (indiscernible) --

5 THE COURT: It's very easy to set up electronic
6 transfers and if indeed she is keeping her money --

7 MR. SILBER: I can't --

8 THE COURT: -- separate from her father's, then
9 that's what you would do and today we wouldn't
10 necessarily be having this argument if the lines were
11 drawn more clearly.

12 MR. SILBER: I don't -- again, as far as her
13 putting the money in a different account, I can't explain
14 that.

15 THE COURT: Okay.

16 MR. SILBER: I think she just did it because it
17 was easy. As far as the money being commingled, I don't
18 think that it was commingled because by the time '12 --
19 2012, '13, came around, the money from Oceania had been
20 expended. So I don't have a statement in 2012 -- I don't
21 have (indiscernible) statement from him. I still didn't
22 get one. I don't have one in front of me to show the
23 balance went from 300 in 2010 to 3,500 in 2013. I'm
24 picking a number. But that's generally what the idea
25 was. The --

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1 THE COURT: But you haven't presented that to
2 the Court.

3 MR. SILBER: The estate -- I have not presented
4 that to the Court.

5 THE COURT: Okay. All right.

6 MR. SILBER: I would be happy to do so if the
7 Court wishes me.

8 THE COURT: Well, today is the day, so I don't
9 know what you're waiting for. And so then --

10 MR. SILBER: But I think that (indiscernible)
11 again --

12 THE COURT: Then my other point is there's no
13 assumption of mortgage here, right? There's no document.

14 MR. SILBER: There's no assumption of mortgage.
15 I would just add that if -- I think that's further proof
16 that this wasn't a scheme.

17 THE COURT: Well, I think it for the proof that
18 everybody just mixed all their finances together and
19 weren't really paying any heed to the important
20 formalities of ownership.

21 MR. SILBER: I don't think that an assumption
22 of mortgage would have helped because the mortgage
23 (indiscernible) would not have (indiscernible).

24 THE COURT: Wasn't assumed.

25 MR. SILBER: I'm sorry.

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1 THE COURT: May the result of -- I mean, maybe
2 the reason is that the mortgage wasn't assumed.

3 MR. SILBER: Well, I am not saying it was
4 assumed but my point is that she could not --
5 (indiscernible) couldn't have assumed the mortgage
6 because I think it's Chase and another lender. We never
7 agreed to that.

8 THE COURT: Right.

9 MR. SILBER: But I find it a little -- I find
10 it troubling that the lack of formality is going to
11 override the fact of where the money came from.

12 THE COURT: Well, let --

13 MR. SILBER: It's a troubling idea.

14 THE COURT: Well, no, the question for me --
15 our discussion this morning is -- has highlighted to me
16 kind of the blurred lines between father and daughter
17 here in terms of who owned what and the father is the one
18 who is in trouble because he has this big judgment
19 against him. And so if he's just going to put it in his
20 daughter's name and thereby say it's his daughter's, I
21 don't think it's that easy and that's the whole point of
22 this exercise is that the plaintiffs are trying to go
23 beyond that to say actually it's still the fathers, so --

24 MR. SILBER: Put what in the daughter's name,
25 the house or the (indiscernible).

Proceedings

1 THE COURT: The house. The house. No, we're
2 talking about the house. This is the --

3 MR. SILBER: No, I understand that .

4 THE COURT: It's about the Bayberry Drive,
5 right?

6 MR. SILBER: I understand that.

7 THE COURT: So --

8 MR. SILBER: But even if -- even if that's true
9 and Mark put the house in the daughter's name --

10 THE COURT: But it's still his because he still
11 lives there, right?

12 MR. SILBER: They all live there. She lives
13 there, too.

14 THE COURT: Okay.

15 MR. SILBER: They all live there.

16 THE COURT: Okay.

17 MR. SILBER: She lives there with her son, her
18 husband, (indiscernible).

19 THE COURT: Yeah, it's a family house, right.

20 MR. SILBER: But even if that's true -- even if
21 it's true that Mark put or transfers or he did -- that
22 Mark and his wife transferred the house to his daughter -
23 -

24 THE COURT: Right.

25 MR. SILBER: -- if there was consideration paid

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1 --

2 THE COURT: Fair consideration.

3 MR. SILBER: Fair consideration paid -- now
4 let's -- if I may, fair consideration of hundreds of
5 thousands of dollars in light of no equity in his house,
6 then who determined -- why isn't that fair consideration?

7 THE COURT: Well, what --

8 MR. SILBER: She has a house with no equity for
9 \$300,000 essentially. She overpaid.

10 THE COURT: All right. So there's a
11 presumption for interfamily transfers that it's
12 fraudulent.

13 MR. SILBER: I understand.

14 THE COURT: And you then need to show that it's
15 not fraudulent but --

16 MR. SILBER: I even understand that. It's an
17 assumption, it's not (indiscernible).

18 THE COURT: And so this is your best argument
19 as to why it's --

20 MR. SILBER: Well, it's not argument, it's what
21 happened to the fact.

22 THE COURT: No, I am just saying that I wanted
23 to make sure that you have said everything you need to
24 say.

25 MR. SILBER: Yes.

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1 THE COURT: Yes, okay. All right. And is
2 there anything you want to say?

3 MR. NATBONY: No, your Honor.

4 THE COURT: No.

5 MR. NATBONY: I think the point has been made.

6 THE COURT: Okay. So then let's move onto the
7 Statnigrosh matter.

8 MR. SILBER: My presence, is it still required?

9 THE COURT: You're welcome to stay but if you
10 want to leave, I don't -- I am turning to Mr. Furman's
11 matter now.

12 MR. SILBER: (Indiscernible).

13 THE COURT: Okay. All right. So this is with
14 regard to the property at 72 Laguna Hills and in this
15 case, there was a transfer -- the properties owned
16 jointly by Mr. Statnigrosh and his wife, Ms. Rozenfeld
17 and 50 percent of that interest was transferred to Nelly
18 Zhuravsky, who is married to Igor Zhuravsky and Nelly
19 happens to be the sister of Ms. Rozenfeld. It looks here
20 -- and the transfer is in 2013 and it looks like this was
21 a \$10 consideration. Is that right, Mr. Furman?

22 MR. FURMAN: As to the last point, I
23 acknowledge that that's what the deed says.

24 THE COURT: Okay.

25 MR. FURMAN: But I am not -- I think that the

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1 facts are that it is not in fact a \$10 transfer or a \$10
2 payment and I know the Court has had a fair amount of
3 colloquy about the \$10 issue from -- I'm not even sure
4 whether we would call this an inter-family transfer
5 because it's -- there are other less than immediate
6 family members involved.

7 THE COURT: A sister is pretty immediate
8 family.

9 MR. FURMAN: Yes, but it's brother-in-law.

10 THE COURT: Well, but the transfer was from the
11 -- it was 50 percent was transferred from the sister --
12 one sister to another sister and the fact that the
13 sisters were married to men of different families doesn't
14 make them no longer families.

15 MR. FURMAN: They're trying to set aside --
16 withdrawn. Okay.

17 THE COURT: Okay.

18 MR. FURMAN: But notwithstanding that, I don't
19 think it's uncommon to have a small nominal consideration
20 in the deed. As a matter of fact, I believe in
21 plaintiff's papers, they mention the fact that there
22 should be an affidavit explaining the reason for the low
23 amount in the transfer deed. There is no such affidavit.

24 Now therefore, when they did this, they were
25 risking that the statements that -- well, where's your

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1 affidavit on this? So it's not that they expect -- that
2 they had an expectation that this would nevertheless
3 happen. If that had happened, they would explain it but
4 they were taking that risk at the time. So they
5 acknowledge that risk. But I don't think that that means
6 that the transfer was a fraudulent conveyance.

7 And let's go back a great deal of time, if I
8 may, and I would like to talk about number one, the time
9 of the transfer or the time of the entry into the lease
10 purchase agreement which is the subject, in large
11 measure, of the plaintiff's reply papers.

12 Now first of all, what we said in our
13 opposition is that the agreement to purchase that
14 interest -- to actually purchase to buy the house, not
15 just 50 percent, was done before this action commenced --
16 three months before this action commenced.

17 THE COURT: When would that have been?

18 MR. FURMAN: That would be in or around August
19 of 2008. And the action I believe was begun in October
20 of 2008. Now what the significance of all of this is is
21 -- and I would like the Court just to consider this, this
22 is a house that these people or that Ms. Zhuravsky lives
23 in and if the Court were to issue that this was a
24 fraudulent conveyance, number one, she is going to lose
25 all of the funds that she did pay into this house which

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1 were to pay the mortgage, which were to pay a down
2 payment, which is documented -- all of which are document
3 and there's a risk that they won't be able to live there
4 anymore.

5 So I respectfully ask that it be considered, as
6 much as your Honor -- but quite seriously, this is not
7 just dollars, this is a residence.

8 THE COURT: Well, but for purposes of
9 considering a motion to avoid fraudulent conveyance, am I
10 suppose to consider equities like that? Do I even have
11 the authority to care about who lives there? If the
12 property was fraudulently conveyed, there are simply --

13 MR. FURMAN: I'm not asking to consider equity.

14 THE COURT: Okay.

15 MR. FURMAN: I'm asking --

16 THE COURT: But you said that she lives there
17 and she would lose her house.

18 MR. FURMAN: -- I'm asking to look at it as
19 openly and fairly as openly and fairly as they can and
20 not in the one-sided way that the plaintiffs have painted
21 it. So --

22 THE COURT: Well, I still have to apply the law
23 and the law is set up in a certain way with regard to
24 fraudulent conveyances. Number one, this is an
25 interfamilial transfer, so there's a presumption that it's

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1 fraudulent.

2 What you've told me as far as August 2008, I
3 understand you've said that Nelly Zhuravsky gave her
4 sister \$68,000 --

5 MR. FURMAN: Yes.

6 THE COURT: -- for the down payment. Do you
7 have any proof of that?

8 MR. FURMAN: Yes, that's part of one of our
9 exhibits.

10 THE COURT: There's a document that says she
11 paid?

12 MR. FURMAN: There's document number 3964
13 and --

14 THE COURT: All right. And --

15 MR. FURMAN: -- has a check from Nelly
16 Zhuravsky to her sister, \$68,000.

17 THE COURT: Uh-hum.

18 MR. FURMAN: It has the word down payment on
19 it.

20 THE COURT: Okay.

21 MR. FURMAN: Now I know what counsel is
22 probably about to say which is well, it's dated 12-1-08
23 which is after the actions and in her affidavit, she
24 explains that. And what she says is we were unable to
25 come up with the funds because we were selling our house

Proceedings

1 and before we could sell our house, which was which
2 wasn't until November of 2008, we couldn't pay the
3 \$68,000.

4 THE COURT: And when did Ms. Rozenfeld and her
5 husband buy the house?

6 MR. FURMAN: I'm sorry?

7 THE COURT: When was the house purchased?

8 MR. FURMAN: What --

9 THE COURT: In August of 2008?

10 MR. FURMAN: Nelly Zhuravsky's house?

11 THE COURT: No, the house that's owned by --
12 the house at issue here that's --

13 MR. FURMAN: I'm sorry, Judge, I couldn't hear
14 you.

15 THE COURT: The house at issue here when was
16 that purchased at --

17 MR. FURMAN: The house --

18 THE COURT: -- in 2008. You said it was
19 purchased in August of 2008, right?

20 MR. FURMAN: They entered into the lease to buy
21 in 2008.

22 THE COURT: What does that mean the lease to
23 buy? When was it purchased?

24 MR. FURMAN: Well, I think it would be
25 technically date of the deed.

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1 THE COURT: Which is what? August?

2 MR. FURMAN: No, the -- are we talking about
3 the 72 Laguna --

4 THE COURT: Yes. You said that the house --
5 you said that Mr. Statnigrosh and his wife, Ms.
6 Rozenfeld, needed money to buy the house in 2008. And
7 that Nelly Zhuravsky gave them money. The check is dated
8 December 1st, '08. My question is when was that house
9 purchased in '08, was it August?

10 MR. FURMAN: I have to go back and look to see
11 where the deed is (indiscernible).

12 THE COURT: All right.

13 MR. FURMAN: So give me just a second or two
14 (indiscernible).

15 (Pause)

16 MR. FURMAN: The deed is 3966. That is May of
17 2013. 1

18 THE COURT: Okay. So the -- you're not talking
19 about 2008 anymore.

20 MR. FURMAN: No. And in the interim --

21 THE COURT: No, but I am trying -- you wanted
22 to take the story back to 2008 --

23 MR. FURMAN: I did.

24 THE COURT: -- which is why I am looking at
25 2008.

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1 MR. FURMAN: Okay.

2 THE COURT: And you said that Nelly Zhuravsky
3 gave her sister \$68,000 and you have a check --

4 MR. FURMAN: Yes.

5 THE COURT: -- but -- in order to make the down
6 payment.

7 MR. FURMAN: Yes.

8 THE COURT: My question is when did that --
9 when was the purchase of the house?

10 MR. FURMAN: Years later because it was a
11 lease --

12 THE COURT: But what was the down payment for
13 then?

14 MR. FURMAN: It was a lease -- if we're talking
15 about a fraudulent conveyance, the question is what is
16 the intent of the parties --

17 THE COURT: I don't think the intent is so
18 important, right? I mean, the actions speak louder than
19 thoughts. So I -

20 MR. FURMAN: Well (indiscernible) the papers
21 from the plaintiff, they seem to think that intent is
22 very important.

23 THE COURT: Well, no, but they're focused on
24 the -- what the transfers need somebody looking at it to
25 infer and so all I am asking is, you took us back to

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1 2008, so that's why I was talking about 2008. And I
2 still haven't gotten an answer there.

3 MR. FURMAN: Well, I (indiscernible) --

4 THE COURT: Because you said -- there's
5 somebody raising his hand but he's not -- I don't know
6 who that is. If you want to confer with somebody -- is
7 that your client?

8 MR. FURMAN: I'm sorry.

9 THE COURT: There's somebody in the audience
10 who keeps raising his hand like he wants to say
11 something.

12 MR. NATBONY: Your client is raising his hand.

13 THE COURT: Who is that? Is that your client?

14 MR. FURMAN: Yes, yes, that's Igor Zhuravsky.

15 THE COURT: Do you want to confer with him? He
16 keeps --

17 MR. FURMAN: Sure.

18 THE COURT: Why don't you ask him.

19 (Counsel and client confer)

20 MR. FURMAN: Are you interested in when Ms.
21 Rozenfeld bought the house?

22 THE COURT: I am interested in --

23 MR. FURMAN: Back in (indiscernible).

24 THE COURT: -- I'm interested in your
25 contention that part of the fair consideration here for

Proceedings

1 2013 is a payment that Nelly Zhuravsky made in 2008 for
2 \$68,000. You've proffered a check to that effect. And
3 my question is when did that purchase in 2008 occur
4 because I am interested in knowing whether, in fact, that
5 check was part of the down payment. And that's why the
6 date matters to me. So I was just trying to establish
7 the date.

8 MR. FURMAN: It was (indiscernible).

9 THE COURT: When?

10 MR. FURMAN: It was (indiscernible).

11 THE COURT: So when was the house bought in
12 2008?

13 MR. FURMAN: The house that -- the
14 transaction --

15 THE COURT: Yes.

16 MR. FURMAN: -- was consummated --

17 THE COURT: Yes.

18 MR. FURMAN: -- in 2013.

19 THE COURT: So it took five years to purchase
20 this house?

21 MR. FURMAN: It was a lease to purchase the
22 house.

23 THE COURT: So for what purpose -- what was the
24 \$68,000 for?

25 MR. FURMAN: It was a down payment --

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1 THE COURT: A down payment --

2 MR. FURMAN: -- on the lease.

3 THE COURT: A down payment on a lease?

4 MR. FURMAN: Yes. And that's what the -- and
5 the lease is and exhibit to our (indiscernible).

6 THE COURT: And the lease of-- who owned the
7 house while it was being leased?

8 MR. FURMAN: The -- Gary Statnigrosh and Alvina
9 Rozenfeld.

10 THE COURT: Okay. So --

11 UNIDENTIFIED SPEAKER: Your Honor, may I say
12 something?

13 THE COURT: Well, no. I -- Mr. Furman is the
14 lawyer here, so I really want to just get the information
15 from him.

16 Okay. Let me do it this way. Prior to 2008,
17 who owned that house?

18 MR. FURMAN: Gary Statnigrosh and Alvin
19 Rozenfeld.

20 THE COURT: Okay. All right. That's all I
21 needed. So then you're saying part -- my understanding
22 from your papers is that part of the fair consideration
23 you're arguing here for the house or the 50 percent
24 interest in the house was about \$200,000 in mortgage and
25 home equity line of credit between January 2009 and May

Proceedings

1 2013, is that correct?

2 MR. FURMAN: And the \$68,000.

3 THE COURT: And the \$68,000, right.

4 MR. FURMAN: And --

5 THE COURT: And do you --

6 MR. FURMAN: And I may add that there are --
7 they're not -- I grant you they're not in these papers --

8 THE COURT: Okay.

9 MR. FURMAN: But there are also carrying
10 charges for this house.

11 THE COURT: But you don't have any
12 documentation for that.

13 MR. FURMAN: Your Honor, it was for that reason
14 that I had asked an opportunity to put some papers in
15 which your Honor respectfully declined.

16 THE COURT: Well, why did you not have them
17 earlier?

18 MR. FURMAN: We didn't have them earlier. We
19 just haven't recovered them as of yet.

20 THE COURT: What was the --

21 MR. FURMAN: Again,

22 THE COURT: The reason they were denied is that
23 you had plenty of opportunity to put everything -- put
24 your best case forward and you made no argument as to why
25 you were unable to do that. That's why you were denied

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1 not because I don't think that it's important
2 information. If it was so important, you would have put
3 it out immediately when you responded and if you couldn't
4 have responded at that time, you could have asked for
5 more time to get the relevant documents and you didn't.

6 So to say now that somehow I've precluded you
7 from an opportunity to put the papers in seems a little
8 bit out of line.

9 MR. FURMAN: Well, I am still trying to show
10 what actually happened here.

11 THE COURT: Okay.

12 MR. FURMAN: I mean, the --

13 THE COURT: But the record before me is what it
14 is. Right? Okay.

15 MR. FURMAN: Well --

16 THE COURT: Well, let me then ask you this.
17 Since when have Nelly Zhuravsky and Igor Zhuravsky been
18 living at 72 Laguna Hills?

19 MR. FURMAN: I believe since 2009.

20 THE COURT: Okay. And are they paying any rent
21 there?

22 MR. FURMAN: They were paying -- well, at this
23 point, Nelly Zhuravsky owns half of the house.

24 THE COURT: Okay, but until then were they
25 paying rent?

Proceedings

1 MR. FURMAN: Yes, they were paying the carrier
2 charges.

3 THE COURT: Okay. And that constitutes their
4 rent.

5 MR. FURMAN: (Indiscernible) paying the
6 mortgage.

7 THE COURT: Okay.

8 MR. FURMAN: And they were saying the carrier
9 charges.

10 THE COURT: Okay. And that constituted their -
11 -

12 MR. FURMAN: And they were also paying --

13 THE COURT: Mr. Furman?

14 MR. FURMAN: They were also paying an
15 assessment from the condo association and the reason that
16 they were paying the mortgage is that because I know it
17 came up, the issue before about the assumption of a
18 mortgage -- there are two issues here. One is, they were
19 paying the bank directly because they were concerned that
20 Mr. Statnigrosh who had not made several payments when he
21 owned the house, would not continue to do so. So they
22 just paid directly.

23 And this time period is 2008 and a lot of
24 people, including Ms. Zhuravsky are not able to get a
25 mortgage or assume a mortgage. So the most simplest

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1 thing to do, to maintain the equity in the house, and
2 prevent the bank from foreclosing is to pay it directly,
3 which was done.

4 THE COURT: Okay. So --

5 MR. FURMAN: And the intent -- to go back to
6 the intent, when this all began, it precedes this action.

7 THE COURT: Okay. So you're saying that in
8 lieu of paying rent, they paid the carrying costs, which
9 was the mortgage, the assessment and the co-op fees.

10 MR. FURMAN: Yes.

11 THE COURT: Okay.

12 MR. FURMAN: Now if I may go back once again to
13 the lease to purchase documents which is again, one of
14 our exhibits, and I would like to talk about the
15 plaintiff's reply to that.

16 THE COURT: Which document is that? Do you --

17 MR. FURMAN: The plaintiff's reply?

18 THE COURT: No, no, the lease to purchase
19 document. I just want to take a look at it.

20 MR. FURMAN: Bear with me, please. This would
21 be 3962, recorded Exhibit A to our affidavit --

22 THE COURT: Okay.

23 MR. FURMAN: Or document number 3962.

24 THE COURT: All right. Go ahead. You wanted
25 to talk about it?

Proceedings

1 MR. FURMAN: No, in the opposition and so --
2 withdrawn.

3 This document was negotiated and tendered to be
4 entered into before the action began. This is the
5 document that presupposes the ultimate transfer.

6 In their opposition, they raise questions about
7 the bona fides of this document. In their opposition --
8 I don't know, I trust your Honor has reviewed it, they
9 question it and say well, this form came from a company
10 and it matches that company's form and that company
11 wasn't formed until 2011. So therefore, their argument,
12 this document couldn't have been signed in 2008.

13 What we don't have is we don't have an
14 affidavit from anybody from the company. We have hearsay
15 allegations or hearsay statements based upon what
16 plaintiff's conversation was. We don't have a -- we
17 don't know whether or not or how that particular company
18 came to write this document, whether it was -- maybe if
19 it was taken from something else.

20 Maybe this document in its form, that was a
21 2008 one, maybe that was the original. Maybe that was
22 what the so-called RocketLawyer document was derived
23 from. We don't have any information about that.

24 They then go in and they say, well, we went in
25 and we saw Mrs. Zhuravsky's bank account when it was

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1 company's, he paid \$10 to RocketLawyer in 2011.

2 Well how come they don't have an invoice from
3 RocketLawyer which if they were speaking to RocketLawyer,
4 they would be able to get an invoice as to what he
5 purchased for \$10.

6 So those are all open questions and where this
7 house is going to be or who is going to own this house is
8 being decided on that. And I respectfully believe that
9 they should have had that affidavit if there was
10 something to it.

11 THE COURT: Mr. Furman, I am looking at this
12 document and it's a rent to own agreement that's dated
13 August 8th, 2008 and it says it will terminate August
14 8th, 2028, 20 years -- it's a 20-year-long contract. And
15 is it still in effect? Because 50 percent of it has now
16 been transferred to one of the signatories to this.

17 MR. FURMAN: No, I don't believe it's still in
18 effect.

19 THE COURT: So --

20 MR. FURMAN: I mean, what happened --

21 THE COURT: -- how was it terminated? When was
22 it terminated?

23 MR. FURMAN: At the end -- they just couldn't
24 continue in the way that it was, so she just purchased
25 her 50 percent. She (indiscernible) get a mortgage to

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1 continue to make these payments.

2 THE COURT: Okay. And so it was five years
3 later and I calculated that at \$4,500 a month, that would
4 be 60 payments, it's \$270,000. Right?

5 MR. FURMAN: I don't have -- I have the math.

6 THE COURT: Right.

7 MR. FURMAN: I will accept that --

8 THE COURT: Approximately.

9 MR. FURMAN: I will accept that.

10 THE COURT: So if that's the amount, then
11 that's what they were supposed to be paying as part of
12 this lease agreement, how is that now also or is that in
13 addition to -- you said that it was instead of the
14 carrying costs.

15 MR. FURMAN: That was --

16 THE COURT: They paid the carrying costs
17 instead.

18 MR. FURMAN: -- they paid the carrying costs.

19 THE COURT: Right.

20 MR. FURMAN: And they paid the mortgage.

21 THE COURT: So you're saying that --

22 MR. FURMAN: They carried the house.

23 THE COURT: Okay. So basically what you're
24 saying is that after five years, 50 percent of the house
25 became theirs instead of after 20 years, 100 percent of

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1 the house became theirs. Is that what you're saying?

2 MR. FURMAN: Yes, in effect that's what -- it
3 had some of these things not happen, it would have
4 possibly taken 20 years under this agreement, unless the
5 agreement was changed.

6 THE COURT: And where was the agreement
7 changed?

8 MR. FURMAN: No, it wasn't. I'm saying it -- I
9 don't have any actual surrender of the agreement but we
10 do have the 2013 deed.

11 THE COURT: Which doesn't say that it was to
12 accelerate this document. It just says the consideration
13 was \$10. So was your client -- there's been talk about
14 how the \$10 might be important. Were your clients trying
15 to evade having to register that transfer and pay a
16 transfer fee on it by making the amount so low when, in
17 fact, it was an actual consideration of \$200,000 or --

18 MR. FURMAN: Well --

19 THE COURT: -- how do you explain that?

20 MR. FURMAN: -- as I said before, I believe in
21 the real estate world, the transfers are often
22 understated --

23 THE COURT: Right.

24 MR. FURMAN: -- for a host of reasons.

25 THE COURT: \$10?

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1 MR. FURMAN: I am not a real estate lawyer but
2 I don't know whether or not this was done by lawyers
3 but --

4 THE COURT: I mean it may well be that it
5 happens where people do make transfers for \$10 and if
6 nobody challenges it, that's fine but if there's a
7 challenge like there is here, then it's up to the Court
8 to look at it to see if, in fact, it was a real
9 conveyance or whether it was a fraudulent one.

10 And so I am still not clear --

11 MR. FURMAN: Well, what I am --

12 THE COURT: -- on why it was -- the deed,
13 itself, which was the operative document for the transfer
14 of the ownership of that 50 percent would say something
15 that isn't accurate.

16 MR. FURMAN: But it strikes me --

17 THE COURT: Because you've got this other
18 documentation about the lease agreement. Why not just
19 say this lease agreement from 2008 is being accelerated
20 so in fact everything they have paid up to now
21 constitutes the fair consideration and we're going to
22 just sell it to them for the \$270,000. That's not what
23 it says.

24 MR. FURMAN: Your Honor, I can't speak to my --
25 I can only speculate on the motivation on my end --

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1 THE COURT: Well, I --

2 MR. FURMAN: -- but I would say the worse thing
3 that you could say is that they didn't -- or they didn't
4 want to pay the real estate taxes.

5 THE COURT: Okay. All right. So --

6 MR. FURMAN: But if that is a motivation --

7 THE COURT: Uh-hum.

8 MR. FURMAN: -- then there becomes a question
9 of whether or not their other intent is -- they had some
10 other intent, not just (indiscernible). Either they
11 evade the real estate taxes or they had some other
12 intent.

13 THE COURT: Okay. Thank you. Let me hear from
14 the plaintiff.

15 MR. NATBONY: Thank you, your Honor. I'm not
16 sure where to begin but I will try and be brief but make
17 a couple of points if I may.

18 So first of all, unlike the Mirvis situation,
19 we are not only talking about a deed here, there are two
20 other documents. There is a State of New York affidavit
21 of consideration for us by seller that was signed by
22 Georgy Statnigrosh and in there he lists the
23 consideration as \$10, not \$10 and other value for
24 consideration, \$10.

25 THE COURT: Well, Mr. Furman has somewhat

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1 conceded that --

2 MR. NATBONY: Right.

3 THE COURT: -- maybe his clients were trying to
4 engage in tax evasion.

5 MR. NATBONY: Right. And also the seller's
6 residence certification. So you have three documents
7 that talk about the consideration.

8 Again, like the Mirvis situation, we're also
9 dealing with a situation of no documentation. You've got
10 family transfer, you know, you've got enhanced scrutiny
11 and they have not -- they keep saying, oh, we paid the
12 carrying costs, we paid them -- there's no documentation
13 in this record at all.

14 What you have is this rent to own agreement
15 that he keeps relying on. Now let's be clear what that
16 rent to own agreement says. It talks about the \$67,000.
17 And what does it say? It says it's a security deposit,
18 not a down payment for the purchase. It's a security
19 deposit.

20 What does it also say? It talks about a
21 purchase price for the property of \$720,000, less the
22 rental payments. Well, we don't have any evidence that
23 any rental payments were paid. All we have is a \$68,000
24 "security deposit," under the lease and we do have
25 payment evidence that they put in showing approximately

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1 \$49,000 in carrying costs over the years that were paid.

2 So even if you say, you know, to me, that's not
3 fair consideration given the value of the property. So
4 no assumption of debt evidence. No proof of payment.

5 You know, and he also talks about, you know,
6 the RocketLawyer, you know, situation. Look, there's no
7 doubt and we did put in the California Secretary of State
8 business entity document that shows that RocketLawyer
9 wasn't even incorporated until days after the lease was
10 reportedly executed. It just raises a question. I'm not
11 saying it gets all the way but I think that your Honor
12 can certainly consider that and based on the testimony
13 that way. So --

14 THE COURT: So you're contending that that
15 document 396-2, the lease to purchase is a false
16 document?

17 MR. NATBONY: We do believe that there's
18 evidence that's it's sham -- that it is a sham document.

19 THE COURT: That was created after the fact
20 or --

21 MR. NATBONY: Yes.

22 THE COURT: All right.

23 MR. NATBONY: Yes. But, you know, the bottom
24 line is even if you get past that, your Honor, at best
25 you've got \$49,000 and you've got a lease that was not

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1 follow-up. Okay? They didn't pay rental payments. They
2 didn't follow the purchase price and by the way, is there
3 any evidence that the lease was ever terminated? The
4 lease on its face says in order to modify it, in order to
5 amend it, in order to change it, there's got to be a
6 document written, signed by both parties. That's in
7 here. I haven't seen any changes or amendments.

8 So look, there's no evidence here of an
9 assumption of a fair equivalent debt. There is a
10 question about the authenticity. You also have to look
11 at the timing. The timing still, of this transfer, you
12 kept asking Mr. Furman, when was the purchase? When was
13 the purchase in 2008? Never occurred.

14 What occurred was this fraudulent transfer in
15 2013. That's what he is claiming the purchase is and
16 that's why when you put it all together, when you put the
17 document together, you put a lack of documentation, you
18 put the question about the validity of the lease
19 agreement together, you know, when you put what was
20 supposed to happen and the actions of evidence that it
21 did, when you put all that together, you know, frankly,
22 your Honor it smells.

23 MR. FURMAN: May I just be heard briefly, very
24 briefly?

25 THE COURT: Yeah, I will give you a brief

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1 reply.

2 MR. FURMAN: There's just one thing. Counsel
3 just talks about \$49,000 but Exhibit D which is document
4 396-5 -- 396-5, has payments, regular payments in the
5 neighborhood of just short of \$4,000, \$3,500, \$3,500
6 every year for years.

7 MR. NATBONY: That's the 49- I was talking
8 about.

9 MR. FURMAN: Well, that's more than 49-.

10 THE COURT: If you add all that up? Is that
11 what you're saying? If it's -- how many years are we
12 talking here? Mr. Furman, when you total all of those
13 payments, how much does it come to?

14 MR. FURMAN: I think it's around \$200,000.

15 MR. NATBONY: Your Honor, you have to remove
16 the duplicates and the payments post-dating the
17 transcript. When you do that, it's \$49,000. And if you
18 look at footnote 6 of our responding brief, that will
19 tell you precisely the payments and that we removed the
20 duplicates and post-transfers.

21 THE COURT: Why would there be duplicates?

22 MR. NATBONY: That, your Honor, you would have
23 to ask Mr. Furman that. I don't know.

24 THE COURT: All right. Well, I can't look at
25 it now but I don't see that it's every single month.

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1 MR. NATBONY: Based on our analysis, your
2 Honor, there were fourteen payments and they were
3 sporadic and we list the dates of the payments in our
4 footnote 6.

5 THE COURT: All right. So I'll take a look at
6 those --

7 MR. NATBONY: Thank you.

8 THE COURT: -- numbers.

9 MR. FURMAN: And then there's also -- and then
10 there are also some checks at the end --

11 THE COURT: Of Exhibit D?

12 MR. FURMAN: -- of that document.

13 THE COURT: Would that not be reflected in the
14 bank statements?

15 MR. FURMAN: I don't believe they are.

16 THE COURT: Why not? So the bank statements in
17 Exhibit D, are those of Nelly Zhuravsky?

18 MR. FURMAN: Those are -- yes.

19 THE COURT: And those are payments -- is it
20 from her?

21 MR. FURMAN: Those are payments that are on --

22 THE COURT: From her bank?

23 MR. FURMAN: -- both the bank and on her credit
24 line.

25 THE COURT: Okay. So but the --

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1 MR. FURMAN: And the other one --

2 THE COURT: The footer on that says a bank name
3 and then it looks like it's the -- her bank account at
4 that bank and it shows payment to -- or no, I am confused
5 now. This is the record of payments to the -- for the
6 mortgage?

7 MR. FURMAN: To the mortgage directly.

8 THE COURT: From her --

9 MR. FURMAN: One second, Judge. May I?

10 (Pause)

11 THE COURT: Mr. Furman, I have had a chance to
12 look at it now. If your Exhibit 4 -- I'm sorry, your
13 Exhibit D, only the first four pages are payments that
14 pre-date the 2013 transfer. The subsequent payments are
15 for 2014, 2015 or later in 2013. But if the transfer was
16 May 3rd, 2013, there's only the first four pages that
17 have relevant payments.

18 MR. NATBONY: And are (indiscernible).

19 THE COURT: I'm sorry?

20 MR. NATBONY: And (indiscernible).

21 THE COURT: Okay. But I am just looking at the
22 large number. And those are later, though --

23 MR. FURMAN: But she's continuing to pay.

24 THE COURT: I understand but how is that the
25 fair consideration then? That's a future payment. How

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1 is that part of the consideration that I am looking at?

2 MR. FURMAN: Well, it's --

3 THE COURT: Because by then as you pointed out
4 --

5 MR. FURMAN: (Indiscernible).

6 THE COURT: Hold on, Mr. Furman. As you
7 pointed out, now half of the property is hers, so the
8 fact that she is paying a mortgage makes perfect sense.

9 MR. FURMAN: Your Honor, I have some of this
10 document and I wanted to offer it and that is that -- and
11 I did err on one thing but there was rent payments that
12 were being made (indiscernible).

13 I meant maintenance fees which they were paying
14 for \$365 a month, that's \$20,000. Assuming that is
15 correct and it's \$49,000 -- let's assume he is correct
16 and there's \$49,000 before the 2013 deed, that would be
17 added to the \$68,000 plus the additional checks that are
18 attached. And that leaves us with \$125,000.

19 THE COURT: But that \$68,000 is the security
20 deposit because there was no purchase in 2008 that would
21 require a down payment.

22 MR. FURMAN: No, the check says down payment.

23 THE COURT: I know it says that but there was
24 no purchase. You told me that the house was owned
25 already in 2008, so there -- what are you needing a down

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1 payment for?

2 MR. FURMAN: Because it was a lease to
3 purchase.

4 THE COURT: But the document -- the lease to
5 purchase document says \$67,000 is the security deposit.

6 MR. FURMAN: Yes, but the amount is \$68,000.

7 THE COURT: So it's a different number?

8 MR. FURMAN: Yes, it is.

9 THE COURT: So it -- what is it? What -- is
10 there a check for a security deposit?

11 MR. FURMAN: No.

12 THE COURT: Okay. So the only check is one for
13 \$68,000 which is like you said, pretty close and even
14 though it says down payment, there's no documentation
15 anywhere talking about a down payment and there's from
16 the history of the transaction, no need for a down
17 payment, so how is it a down payment?

18 MR. FURMAN: Because there was a period between
19 the time that they entered into the agreement and -- or
20 at the time that they began the agreement and then the
21 time that they actually were able to start making
22 payments on. So there was a gap and I believe part of
23 that was paid by the \$68,000 where they were already
24 occupying the house and had already begun to live there
25 towards the eye of ultimately purchasing the house.

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1 THE COURT: When did they move into the house?

2 MR. FURMAN: I don't have that exact
3 information.

4 THE COURT: Your client is here. You could ask
5 him. You could ask him when he moved into that house.

6 MR. FURMAN: I will.
7 (Counsel and client confer)

8 THE COURT: And the question is just -- it's a
9 simple one, Mr. Furman, when did he --

10 MR. FURMAN: Beginning of 2009.

11 THE COURT: That's when he started living in
12 the house?

13 MR. FURMAN: Yes.

14 THE COURT: Okay. All right. So do you have
15 anything further?

16 MR. FURMAN: Sorry.

17 THE COURT: Do you have any further argument?

18 MR. FURMAN: Again, I will state to the Court
19 when --

20 THE COURT: You don't need to repeat anything.
21 I just want to see if you missed anything.

22 MR. FURMAN: No, I am not repeating something.

23 THE COURT: Okay. You said again, that's why
24 I --

25 MR. FURMAN: No, I -- well, one of the issues

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1 was I did mention that they were concerned about the
2 mortgage not being paid and, in fact, the mortgage was in
3 a negative situation at the time that they began making
4 the payments because the house -- the original mortgage
5 was 540 and it was 588 when they started or he bought the
6 house but started to make payments.

7 THE COURT: How did the mortgage go up? Was it
8 a balloon loan or something? You said the mortgage
9 started at 540 and went to 580?

10 MR. FURMAN: I can't tell you if there was, you
11 know, equity taken out of the house during --

12 THE COURT: Oh, I see.

13 MR. FURMAN: -- the time that it was purchased
14 in 2004, so obviously a mortgage can --

15 THE COURT: Right. Okay. Because you had
16 mentioned the home equity line of credit.

17 MR. FURMAN: Yeah.

18 THE COURT: Okay. I understand.

19 MR. FURMAN: But just to summarize for my last
20 statement is that there was not a partial sale in 2013,
21 that was just securing the deed from all the payments
22 that were being made from 2008 on.

23 THE COURT: Okay.

24 MR. NATBONY: One concluding sentence?

25 THE COURT: Okay.

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1 MR. NATBONY: I just want to emphasize that I
2 appreciate Mr. Furman's testimony but he's not a proper
3 witness at this time. And it's his burden to show fair
4 and equitable value consideration (indiscernible).

5 THE COURT: All right. So let me turn to the
6 final part of the hearing National Grid today and that is
7 that the remedy.

8 You've proposed a remedy here that's in the
9 alternative, so I wanted to understand. I'm not very
10 familiar with what it means to have the conveyance set
11 aside or disregard the conveyance. What's the
12 difference? And what form will this take because you
13 haven't submitted a proposed order. So in my report and
14 recommendation, I need to have more guidance on what
15 exactly you want the Court to do.

16 MR. NATBONY: I think what we're asking for,
17 your Honor, is for the transactions to be set aside and
18 for an execution on the property not to (indiscernible).

19 THE COURT: You said execution of the property?

20 MR. NATBONY: On the property.

21 THE COURT: On the property, sorry, which means
22 having the property sold? I'm just trying to figure out
23 what it actually means.

24 MR. NATBONY: May I have one moment, your
25 Honor?

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1 THE COURT: Sure.

2 (Pause)

3 MR. NATBONY: So with respect to the Mirvis
4 situation, we would ask for a second (indiscernible) in
5 the transaction, have the ability that (indiscernible)
6 execute on the property through a sale.

7 With respect to Zhuravsky, because we're
8 dealing with a New Jersey situation, we would basically
9 ask for setting aside the transaction and we'll do what
10 we have to do, you know, beyond that in New Jersey.

11 THE COURT: So just set aside the transaction
12 and then --

13 MR. NATBONY: That's correct.

14 THE COURT: -- you would pursue it through a
15 separate proceeding?

16 MR. FURMAN: And I would say, your Honor, in
17 terms of the execution, if you were to set aside the
18 transaction, it would still be a nondebtor who owned one-
19 half of the property.

20 MR. NATBONY: Well, there should be a judgment
21 against Nelly Zhuravsky also through the amount -- I
22 mean, that's the other thing that we're asking for.

23 THE COURT: Oh, okay. So you want the
24 transaction to be set aside and what?

25 MR. NATBONY: A judgment against Nelly

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1 Zhuravsky.

2 THE COURT: For what?

3 MR. NATBONY: For the amount --

4 MR. FURMAN: I feel that, your Honor --

5 THE COURT: Hold on. Wait.

6 MR. FURMAN: -- (indiscernible) remedy, he
7 should have made that (indiscernible).

8 THE COURT: Hold on. He didn't finish his
9 sentence, so I am trying to figure out what he is trying
10 to say.

11 MR. NATBONY: Well, it's a judgment in the
12 amount of the transfer that was fraudulently conveyed.

13 THE COURT: But if you were reversing -- if
14 you're setting aside the transaction --

15 MR. NATBONY: Right.

16 THE COURT: -- then it's reversed, so that 50
17 percent --

18 MR. NATBONY: That's true.

19 THE COURT: -- goes back --

20 MR. NATBONY: That's true.

21 THE COURT: -- to the original owners and
22 nothing should happen to Ms. Zhuravsky.

23 MR. NATBONY: You're right (indiscernible).

24 THE COURT: Okay. All right. So just setting
25 aside the transaction, and so that -- the net effect of

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1 that is that 100 percent of the property at 72 Laguna
2 Hills will go back to Mr. Statnigrosh and Ms. Rozenfeld.
3 Correct?

4 MR. FURMAN: Jointly.

5 THE COURT: However it was before the 2013
6 transaction.

7 MR. FURMAN: That (indiscernible).

8 THE COURT: Yes, is that right?

9 MR. NATBONY: I'm sorry. Yes, your Honor.

10 THE COURT: Yes. So you'll just go back to the
11 way it was before May 2013. So that Mr. Statnigrosh and
12 Ms. Rozenfeld jointly own the property. Yes? And --

13 MR. FURMAN: So they would have a -- they would
14 have a -- best case, they would have fifty percent
15 (indiscernible).

16 THE COURT: Well, that's why I wanted to know
17 what the Court is supposed to do and if you're not asking
18 to do anything -- asking the Court to do anything beyond
19 that, then it would all stop there.

20 MR. NATBONY: Can we just have one minute to
21 talk, your Honor?

22 THE COURT: Okay.
23 (Pause)

24 MR. NATBONY: So we're going to go back to the
25 way it was. That's what we're going to do.

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1 THE COURT: Okay. Great. So it would be
2 helpful if you submitted a proposed order, so that I can
3 consider it and incorporate it into my report and
4 recommendation to Judge Townes, okay?

5 MR. NATBONY: Yes, your Honor.

6 THE COURT: Was there anything that I needed to
7 go through that I did not?

8 MR. FURMAN: No, I would just like to
9 (indiscernible) --

10 THE COURT: Yes, go ahead, Mr. Furman.

11 MR. FURMAN: I would just like a little time to
12 look at the proposed order when it's being submitted.

13 THE COURT: Well, I'll allow you to say
14 something about it if it wasn't -- if it contains
15 information that was not the subject of the briefing to
16 date. So in other words, if it's what they've talked
17 about, all of that -- all the order is doing is
18 summarizing what is supposed to be done.

19 MR. FURMAN: And I would expect that you will
20 (indiscernible) --

21 THE COURT: Okay.

22 MR. FURMAN: -- that I could point out
23 (indiscernible).

24 THE COURT: If it's beyond that.

25 MR. FURMAN: That would be against Nelly

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1 Zhuravsky. I just want to be sure that --

2 THE COURT: I understand.

3 MR. FURMAN: -- (indiscernible).

4 MR. NATBONY: This (indiscernible) be looking
5 at.

6 THE COURT: Yes, if it's asking for anything
7 other than undoing the transaction in May of 2013 --

8 MR. NATBONY: For Zhuravsky.

9 THE COURT: For Zhuravsky, yes. Then certainly
10 you can -- I'll give you the opportunity to respond to it
11 but if it only says that, that has been fully discussed
12 and briefed. So -- okay, good. But please submit those
13 and I will take this under advisement and issue a written
14 report and recommendation for the district judge. Okay?

15 MR. NATBONY: Thank you, your Honor.

16 MR. FURMAN: Thank you, your Honor.

17 THE COURT: Thank you.

18 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 7th day of June, 2017.


Linda Ferrara

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